

Members

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Sen. John Broden
Sen. Timothy Lanane
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Ken Buck
Tom Bodkin



ANNEXATION STUDY COMMITTEE

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Authority: P.L. 224-2007 (HEA 1478-2007)

MEETING MINUTES¹

Meeting Date: September 12, 2007
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Jeff Drozda, Chairperson; Sen. Greg Walker; Sen. John Broden; Sen. Timothy Lanane; Rep. David Niezgodski; Rep. Nancy Dembowski; Rep. Phil Hinkle; Rep. Milo Smith; Chuck Williams; Barbara Krisher; C. Pete Peterson; Patti O'Callaghan; Mark Catanzarite; Ken Buck; Tom Bodkin.

Members Absent: Andy Cook.

1. Call to order/ introduction of members.

Sen. Drozda called the meeting to order at 10:00 a.m. Committee members introduced themselves.

2. Witness testimony/ Committee Discussion

Bob Kraft, Indiana Farm Bureau, Inc. made the following comments:

- Municipalities annex in order to capture areas with the highest assessed valuation. Counties lose tax revenue as a result of an annexation.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

- Current law permits the owners of 75% of the assessed value of land to file a remonstrance. This "assessed value standard" no longer accurately reflects the volume of land being annexed, because of the disparity in assessments. He suggested replacing the standard with one that uses the total acreage of territory being annexed.
- The number of landowners required for a remonstrance should be reduced to 51% of the owners of land or the owners of 51% of the assessed valuation of the territory.
- A municipality should be responsible for the remonstrators' reasonable attorney's fees if a remonstrance is successful.
- Agricultural land should be exempt from municipal taxes as long as it remains agricultural land.
- An arbitration panel should be created that would represent both the municipality and the area to be annexed.
- Land that is annexed should be contiguous to the municipality.
- Voluntary annexation would be appropriate where a municipality has built an industrial park or airport on the land or where the land is contiguous residential land.
- Annexation should occur after land is platted, but before the lots are sold. This would avoid the situation where a person purchases a lot not knowing that the lot is subject to a waiver of remonstrance given by the developer to the municipality in return for extension of sewer service.

The Committee discussed the following issues:

- Whether an annexation arbitration panel would make the final decision or whether a court would make the final decision after receiving a recommendation from the panel.
- Responding to a point made by Mr. Kraft, Sen. Drozda referred to IC 36-4-3-4.1 which already permits the exemption of agricultural land from municipal taxation if the landowner consents.
- Changing the requirement of contiguity between the municipality and the annexed territory.

Diane Balogh discussed problems she encountered with Whitestown's annexation of a portion of Eagle Township. She distributed to the Committee a handout of her comments (Exhibit #1). Ms. Balogh suggested that waivers of remonstrance should be incorporated into property deeds in order to give purchasers more notice. She recommended that a public body review an annexation to determine whether the statutory requirements have been met. She explained that an error in the legal description of the annexed territory in the Whitestown annexation wasn't discovered until after the annexation ordinance was adopted.

Richard Cockrum, representing the Lake County Commissioners and Council, requested that the county executive of a county be notified of an annexation at the same time landowners are notified. He distributed a handout with a draft of suggested language (Exhibit #2). He explained that if municipalities don't annex an entire road, the responsibility for

maintenance of a road can become patchy. The Committee discussed interlocal agreements between the county and municipality for road maintenance. Committee member Tom Bodkin said that he believes IC 36-4-3-2.5, which requires land annexed contiguous to a public highway to include both the highway and the rights of way, to address the problem posed by Mr. Cockrum.

Steve Buschmann, Thrasher, Buschmann, & Voelkel, P.C., distributed a copy of his presentation to the Committee (Exhibit #3). Mr. Buschmann recommended the following changes in the annexation statutes to make the proceeding more equitable for remonstrators of an involuntary annexation:

- Reduce the number of remonstrators required to file and oppose a remonstrance from 65% to 50%.
- Amend the law to provide that the percentage of landowners required to file a remonstrance is fixed as of filing of the remonstrance. Landowners who withdraw their name after the remonstrance is filed would not affect the percentage required for the court to certify the remonstrance.
- Amend the law to provide that signing a remonstrance creates a rebuttable presumption at trial that the person opposes the annexation.
- Allow the municipality and remonstrators to jointly stipulate to a continuance of the hearing.
- Allow a declaratory judgment to challenge "illegal annexations". He discussed how municipalities "stack" annexations by subdividing territory into smaller parcels, annexing one parcel that is contiguous to the municipality, and then using that parcel to establish contiguity for annexing the other parcels. He suggests allowing city residents to challenge an annexation for up to five years, with the remedy being disannexation. An owner of land in the annexation area could challenge the annexation for up to ten years, with the remedy being disqualification of the illegally annexed area for use in determining contiguity.
- Allow remonstrators to recover fees and costs from the municipality for a successful remonstrance.
- Clarify the meaning of providing fire protection under IC 36-4-3-13(e)(2)(A). He suggested clarifying that a municipality is not providing fire protection if the municipality is providing the fire protection via a contract with another government entity.

The Committee discussed whether the law should be amended to require the annexation territory to be less contiguous to the municipality and the creation or designation of a public body to review annexations for statutory compliance. Sen. Drozda announced that the next meeting of the Committee would be held on September 26, at 10:00 a.m. in Room 431. He indicated that it would be helpful if those testifying in the future would prepare a written summary of their comments for the Committee. Sen. Drozda adjourned the meeting at 12:08 p.m.